

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

CHRISTINA LOUISE MCCALB,  
Plaintiff.

Case No. 2:21-cv-01348-EJY

V.

KILOLO KIJAKAZI, ACTING  
COMMISSIONER OF SOCIAL SECURITY,  
Defendant.

## ORDER

10 Pending before the Court is Plaintiff's Motion for Reversal and/or Remand (ECF No. 18),  
11 Defendant's Cross-Motion to Affirm (ECF Nos. 19), Defendant's Response to Plaintiff's Motion  
12 (ECF No. 20), and Plaintiff's Reply (ECF No. 21).

## I. Procedural Background.

14 Plaintiff filed her application for disability insurance benefits (“DIB”) and Supplement  
15 Security Income (“SSI”) under Title II and XVI of the Social Security Act (the “SSA” or “Act”) on  
16 July 30, 2018. Administrative Record (“AR”) 281-96. The Commissioner denied Plaintiff’s  
17 application on November 26, 2018 (AR 207), and again after reconsideration on May 30, 2019. AR  
18 216. A hearing in front of the Administrative Law Judge (“ALJ”) was held on July 15, 2020, after  
19 which the ALJ found Plaintiff was not disabled. AR 77-91. This decision became final and  
20 appealable after the Social Security Administration (sometimes the “Administration”) Appeals  
21 Council denied Plaintiff’s request for review. AR 1-4; 42 U.S.C. §§ 405(g); 1383(c)(3).

## II. The Standard of Review.<sup>1</sup>

23 A decision of the Commissioner must be affirmed if the decision is based on correct legal  
24 standards and the findings are supported by substantial evidence in the record. 42 U.S.C. § 405(g);  
25 *Batson v. Comm'r Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). Substantial evidence is  
26 “more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as

<sup>1</sup> The relevant regulations for DIB and SSI are essentially identical; thus, this Order references the DIB regulations.

1 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal citation  
 2 and quotation marks omitted). In reviewing the alleged errors, the Court must weigh “both the  
 3 evidence that supports and detracts from the conclusion.” *Martinez v. Heckler*, 807 F.2d 771, 772  
 4 (9th Cir. 1986) (internal citations omitted).

5 “When the evidence before the ALJ is subject to more than one rational interpretation, we  
 6 must defer to the ALJ’s conclusion.” *Batson*, 359 F.3d at 1198, *citing Andrews v. Shalala*, 53 F.3d  
 7 1035, 1041 (9th Cir. 1995). However, a reviewing court “cannot affirm the decision of an agency on  
 8 a ground that the agency did not invoke in making its decision.” *Stout v. Comm’r Soc. Sec. Admin.*,  
 9 454 F.3d 1050, 1054 (9th Cir. 2006) (internal citation omitted). Finally, the Court may not reverse  
 10 an ALJ’s decision based on an error that is harmless. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.  
 11 2005) (internal citation omitted). “[T]he burden of showing that an error is harmful normally falls  
 12 upon the party attacking the agency’s determination.” *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009).

13 **III. Establishing Disability Under the Act.**

14 To establish disability under the SSA, there must be substantial evidence that:

15 (a) the claimant suffers from a medically determinable physical or mental  
 16 impairment that can be expected to result in death or that has lasted or can be  
 17 expected to last for a continuous period of not less than twelve months; and

18 (b) the impairment renders the claimant incapable of performing the work that the  
 19 claimant previously performed and incapable of performing any other substantial  
 20 gainful employment that exists in the national economy.

21 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999), *citing* 42 U.S.C. § 423(d)(2)(A). “If a claimant  
 22 meets both requirements,” the claimant is disabled. *Id.* The ALJ employs a five-step sequential  
 23 evaluation process to determine whether a claimant is disabled within the meaning of the Act. *Bowen*  
 24 *v. Yuckert*, 482 U.S. 137, 140 (1987); 20 C.F.R. § 404.1520(a). Each step is potentially dispositive  
 25 and “if a claimant is found to be ‘disabled’ or ‘not-disabled’ at any step in the sequence, there is no  
 26 need to consider subsequent steps.” *Tackett*, 180 F.3d at 1098 (internal citation omitted); 20 C.F.R.  
 27 § 404.1520. The claimant carries the burden of proof at steps one through four, and the Commissioner  
 28 carries the burden of proof at step five. *Tackett*, 180 F.3d at 1098.

1 The five steps are:

2 Step 1. Is the claimant presently working in a substantially gainful activity? If so,  
 3 then the claimant is “not disabled” within the meaning of the SSA and is not entitled  
 4 to disability insurance benefits. If the claimant is not working in a substantially  
 5 gainful activity, then the claimant’s case cannot be resolved at step one and the  
 6 evaluation proceeds to step two. 20 C.F.R. § 404.1520(b).

7 Step 2. Is the claimant’s impairment severe? If not, then the claimant is “not  
 8 disabled” and is not entitled to DIB. If the claimant’s impairment is severe, then  
 9 the claimant’s case cannot be resolved at step two and the evaluation proceeds to  
 10 step three. 20 C.F.R. § 404.1520(c).

11 Step 3. Does the impairment “meet or equal” one of a list of specific impairments  
 12 described in the regulations? If so, the claimant is “disabled” and therefore entitled  
 13 to DIB. If the claimant’s impairment neither meets nor equals one of the  
 14 impairments listed in the regulations, then the claimant’s case cannot be resolved  
 15 at step three and the evaluation proceeds to step four. 20 C.F.R. § 404.1520(d).

16 Step 4. Is the claimant able to do any work that he or she has done in the past? If  
 17 so, then the claimant is “not disabled” and is not entitled to DIB. If the claimant  
 18 cannot do any work he or she did in the past, then the claimant’s case cannot be  
 19 resolved at step four and the evaluation proceeds to the fifth and final step. 20  
 20 C.F.R. § 404.1520(e).

21 Step 5. Is the claimant able to do any other work? If not, then the claimant is  
 22 “disabled” and entitled to DIB. 20 C.F.R. § 404.1520(f)(1). If the claimant is able  
 23 to do other work, then the Commissioner must establish there are a significant  
 24 number of jobs in the national economy that claimant can do. There are two ways  
 25 for the Commissioner to meet the burden of showing there is other work in  
 26 “significant numbers” in the national economy the claimant can do: (1) by the  
 27 testimony of a vocational expert (“VE”), or (2) by reference to the Medical-  
 28 Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app. 2. If the Commissioner  
 29 meets this burden, the claimant is “not disabled” and not entitled to DIB. 20 C.F.R.  
 30 §§ 404.1520(f), 404.1562. If the Commissioner cannot meet this burden, then the  
 31 claimant is “disabled” and entitled to disability benefits. *Id.*

32 *Id.* at 1098-99 (internal alterations omitted).

33 **IV. Summary of the ALJ’s Decision.**

34 At step one of the five step sequential process, the ALJ found Plaintiff met “the insured status  
 35 requirement of the ... Act through December 31, 2021.” AR 82. The ALJ stated that Plaintiff “has  
 36 not engaged in substantial gainful activity since December 31, 2017, the alleged onset date.” AR 83.  
 37 At step two, the ALJ found Plaintiff suffers from severe impairments including “Mood Disorder,  
 38 Post-Traumatic Stress Disorder ..., Psychotic Disorder, Borderline Intellectual functioning, and,  
 39 Anorexia ....” AR 83.

1           At step three, the ALJ found Plaintiff “does not have an impairment or combination of  
 2 impairments that meets or medically equals the severity of one of the listed impairment in 20 CFR  
 3 Part 404, [s]ubpart P., [a]ppendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925  
 4 and 416.926.)” AR 83. In preparation for step four, the ALJ found that Plaintiff has the residual  
 5 functional capacity (“RFC”)<sup>2</sup> to perform:

6           a full range of work at all exertional levels but with the following nonexertional  
 7 limitations: She can understand and remember short and simple instructions,  
 8 locations, and work-like procedures; she can make simple work-related decisions  
 9 and sustain adequate concentration, persistence, and pace to carry out simple tasks  
 10 over the course of a normal workday or workweek; she has some difficulty  
 11 interacting with peers, supervisors, and the general public, but can interact on an  
 12 occasional, superficial basis; she can adapt and respond appropriately to routine  
 13 changes in the workplace

14           AR 85. At step four, the ALJ determined Plaintiff “is unable to perform any part of past relevant  
 15 work.” AR 88. The ALJ next stated found Plaintiff is a younger individual (34), “has a limited  
 16 education” and, because Plaintiff was ultimately found not disabled, the transferability of skills was  
 17 not material to the ALJ’s determination. AR 89. At step five, the ALJ found that considering  
 18 Plaintiff’s age, education, work experience, and RFC, there are jobs in significant numbers in the  
 19 national economy that Plaintiff is able to perform. AR 89. In conclusion, the ALJ found Plaintiff  
 20 has not been under a disability as defined by the SSA. AR 90.

21           **V. The Issue Presented.**

22           Plaintiff contends that the ALJ erred when he found anorexia is a mental impairment under  
 23 the Listing for Impairments established by the Social Security Administration, and failed to consider  
 24 whether Plaintiff meets the Listing requirements of § 5.08, “Weight Loss due to any digestive  
 25 disorder.”<sup>3</sup> ECF No. 18 at 6:16-17.

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<sup>2</sup> “Residual functional capacity” is defined as “the most you can still do despite your limitations.” 20 C.F.R. §  
 27 416.945(a)(1).

28           <sup>3</sup> See 5.00-Digestive-Adult (ssa.gov) stating the Administration assesses “the effects of treatment, including  
 29 medication, therapy, surgery, or any other form of treatment you receive, by determining if there are improvements  
 30 in the symptoms, signs, and laboratory findings of your digestive disorder. We also assess any side effects of your  
 31 treatment that may further limit your functioning.” <http://www.ssa.gov/disability/professionals/bluebook/5.00-Digestive-Adult.htm>. Section 5.08 states the SSA “assess[es] the effects of treatment, including medication,  
 32 therapy, surgery, or any other form of treatment you receive, by determining if there are improvements in the  
 33 symptoms, signs, and laboratory findings of your digestive disorder. We also assess any side effects of your  
 34 treatment that may further limit your functioning.” *Id.*

1       **VI. The ALJ's Discussion of Plaintiff's Weight and Anorexia.**

2           After discussing Plaintiff's (1) ability to understand, remember, and apply information, (2)  
 3 interact with others, (3) concentrate and persist or maintain pace, and (4) adapt or manage herself  
 4 (AR 83-85), the ALJ noted that consulting examiner L.D. Larson, Ph.D., assessed Plaintiff as  
 5 underweight and suffering from "anorexia by history." AR 86. The ALJ further found:

6           The claimant testified that her weight fluctuated between 83 and 89 pounds. Her  
 7 body mass index (BMI) was less than 16.5 kilograms per meter squared (B4F/3). Albeit low, her weight was generally stable (B2F/1). The claimant endorsed a  
 8 decreased appetite, which worsened with stress (e.g., B3F/1, B11F/3, Testimony). Following her move from California and disruption in her medication, she lost ten  
 9 pounds (B4F/12). She reported difficulty eating with other people and maintaining  
 appetite (Testimony). She did not eat three times a day (Testimony).

10          AR 87. Thereafter, the ALJ found that "[d]espite her low body weight, the evidence does not support  
 11 finding postural or exertional limitations. For example, several reports noted normal gait, without  
 12 observed problems with ambulation, balance, or posture .... [Plaintiff] denied chest pain, shortness  
 13 of breath, edema, vision and hearing problems .... She had a regular heart rate and rhythm without  
 14 murmurs, thrills, or rubs .... Moreover, her lungs were clear to auscultation with normal respiratory  
 15 effort .... Her abdomen was soft and non-tender and she had intact reflexes ...." *Id.*

16       **VII. Discussion.**

17           A.     Plaintiff's Arguments in Support of Remand.

18          Despite stipulating that the ALJ fairly and accurately summarized the medical evidence in  
 19 the Administrative Record (ECF No. 18 at 5), Plaintiff contends the record contains evidence  
 20 supporting a finding that Plaintiff meets the SSA Listing Impairment at § 5.08.<sup>4</sup> Plaintiff focuses on  
 21 language in this Listing requiring a "BMI of less than 17.50 calculated on at least two evaluation at  
 22 least 60 days apart within a consecutive 6 month period." ECF No. 18 at 6 *citing id.* Plaintiff points  
 23 to medical history involving her gallbladder (*id. citing* AR 429), and that Plaintiff had a BMI of 15.8  
 24 in November 2018 and 17.5 in March of 2019. *Id. also citing* AR 418. Plaintiff says that "after  
 25 continuing her prescribed treatment," her BMI dropped to 16.4 in July 2019 and, her weight  
 26 fluctuated. *Id. at 6-7 citing* AR 418 and 420. Plaintiff then concludes that she "has weight loss due  
 27 to a digestive disorder and two evaluation show[ing] a BMI less than 17.5 despite continuing

28          <sup>4</sup> 20 C.F.R. pt. 404, subpt. P, app. 1, § 5.08.

1 treatment.” *Id.* at 7. Plaintiff argues that if anorexia is a digestive impairment, then … [she] is  
 2 disabled.” *Id.* If anorexia is not a digestive impairment, “but a composite physical-mental  
 3 impairment with a physical manifestation of weight loss, then … [she] equals listing 5.08.”

4       B.     Defendant’s Argument Supporting the ALJ’s Evaluation and Denial of Remand.

5       Defendant argues that to establish an impairment under an SSA Listing, Plaintiff must meet  
 6 all of the specified medical criteria. ECF No. 19 at 9 *citing* 20 C.F.R. pt. 404, subpt. P, app. 1;  
 7 *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990). Defendant further contends that because Listings  
 8 “operate as a presumption of disability” the Impairments “set a high level of severity.” *Id. citing*  
 9 *Kennedy v. Colvin*, 738 F.3d 1172, 1176 (9th Cir. 2001). Defendant contends Plaintiff identifies the  
 10 wrong Listing for her impairment. *Id.* “Listing 12.13 is the correct standard for evaluating whether  
 11 an eating disorder is *per se* disabling.” *Id.* Defendant refers to 20 C.F.R. pt. 404, subpt. P, app. 1, §  
 12 12.00B10b, which defines eating disorders. This Listing states: “Examples of disorders that we  
 13 evaluate in this category include anorexia nervosa, bulimia nervosa, binge-eating disorder, and  
 14 avoidant/restrictive food disorder.” *Id.* Defendant argues that to meet Listing 12.13, Plaintiff “must  
 15 prove that she has extreme limitations in at least one of the four functional domains, or marked  
 16 limitations in at least two of the four domains.” ECF No. 19 at 6 *citing* 20 C.F.R. pt. 404, subpt. P,  
 17 app. 1, § 12.00B. Defendant explains that the ALJ did the necessary analysis and found only mild to  
 18 moderate limitations. *Id. citing* AR 83-84. Defendant states that Plaintiff does not challenge these  
 19 findings and, therefore, has forfeited this argument. *Id.* (internal citations omitted). Defendant is  
 20 correct. *See* ECF No. 18; *Brown v. Kijakazi*, Case No. 18-16133, 2021 WL 484412, at \*1 (9th Cir.  
 21 Oct. 18, 2021). Defendant also correctly concludes his argument by pointing out that Plaintiff has  
 22 forfeited the argument that her eating disorder meets the requirements of Listing 12.13. *Id.*

23       Defendant cites to case law finding that anorexia nervosa, and eating disorders generally, do  
 24 not fall within Listing 5.08. ECF No. 19 at 6-7 *citing* and *comparing* 20 C.F.R. pt. 404, subpt. P, app.  
 25 1, § 12.00B10b, defining eating disorders, with § 5.00A, defining digestive disorders; *Carlson v.*  
 26 *Astrue*, 604 F.3d 589, 193 (8th Cir. 2010); *Renee Jean N. v. Saul*, Case No. 2:18-cv-385-FVS, 2020  
 27 WL 1318791, at \*10 (E.D. Wash. Mar. 20, 2020) (rejecting the plaintiff’s argument that her anorexia  
 28 meet or medically equals the criteria of 20 C.F.R. pt. 404, subpt. P, app. 1, § 5.08).

1           Defendant further points out that even if Listing 5.08 were to apply, Plaintiff's BMI readings  
 2 of less than 17.5 occurred eight months apart (November 2018 and July 2019), thus failing to meet  
 3 the requirements of the Listing. ECF No. 19 at 7 *citing* AR 420, 429, 437, 441. And, with respect to  
 4 Plaintiff's argument that her impairments, when combined, equal the severity of Listing § 5.08,  
 5 Defendant argues Plaintiff offers no theory to support this contention. *Id.* at 8.

6           C.     The Court's Analysis.

7           The Listing found at 20 C.F.R. pt. 404, subpt. P, app. 1, § 5.08 pertains to weight loss due to  
 8 any digestive disorder. The Social Security website explains that “[d]isorders of the digestive system  
 9 include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease,  
 10 short bowel syndrome, and malnutrition. They may also lead to complications, such as  
 11 obstruction, or be accompanied by manifestations in other body systems.” *See*  
 12 <http://www.ssa.gov/disability/professionals/bluebook/5.00-Digestive-Adult.htm> § 5:01. To meet  
 13 the requirements of this listing, Plaintiff's “low weight must be as severe as the listing requirement  
 14 and must be due to an impairment that is as severe as a *gastrointestinal disorder*.” *Kornbau v.*  
 15 *Berryhill*, Case No. 1:18-cv-1379 (CMH/IDD), 2019 WL 7900793, at \*8 (E.D. Va. Oct. 18, 2019)  
 16 (emphasis in original).

17           Here, Plaintiff cites to one gastrointestinal note in the entirety of the medical record. ECF  
 18 No. 18 at 6 *citing* AR 429. The note cited to states: “gallbladder January 2018.” AR 429. Other than  
 19 this citation, Plaintiff points to nothing in the record that evidences a gastrointestinal disorder. In  
 20 contrast, there is substantial evidence in the record, which Plaintiff agrees was accurately summarized  
 21 by the ALJ, that points to the many impairments found by the ALJ. AR 83.

- 22           • AR 83 (citing AR 110-11, 399, 460) acknowledging Plaintiff's history of special  
 23           education;
- 24           • AR 84 (citing AR 340, 398) acknowledging Plaintiff's difficulty understanding and  
 25           following instructions;
- 26           • AR 84 (citing AR 398, 340) acknowledging Plaintiff's borderline cognitive ability on  
 27           testing;

- 1     • AR 84 (citing AR 116-17, 335, 340, 398, 467-68) acknowledging Plaintiff's moderate  
2     impairment in interacting with others, difficulty getting along with others, difficulty with  
3     being told what to do, and easy aggravations, frustration, and irritability;
- 4     • AR 84 (citing AR 105, 114-15, 318, 338, 340, 397, 406-07, 411, 475) acknowledging  
5     Plaintiff was prone to sadness, depression, crying spells, paranoid feelings, and did not  
6     enjoy shopping;
- 7     • AR 84 acknowledging Plaintiff's moderate limitation in concentrating, persisting or  
8     maintaining pace;
- 9     • AR 84 (citing 115, 318, 399, 400-01, 403, 406-07, 411) acknowledging Plaintiff alleged  
10    flashbacks and nightmares, slow and lethargic energy, and inability to complete tasks;
- 11    • AR 84 (citing AR 336) acknowledging Plaintiff's mild limitation in adapting and  
12    managing herself; and,
- 13    • AR 87 (citing 397, 418, 420, 435, 441) acknowledging Plaintiff's anorexia, her BMI, that  
14    Plaintiff is underweight, suffers weight fluctuation, decreased appetite that worsens with  
15    stress, and that following a move from California, which disrupted medication, Plaintiff  
16    lost ten pounds. AR 87.

17 The single citation by Plaintiff—that is, the entry on AR 429 stating “gallbladder jan 2018”—is  
18 clearly distinguishable from the above and does not meet the substantial evidence standard even when  
19 viewed in light of the relatively low requirements applicable to this standard. A reasonable person  
20 would not accept this entry as adequate to support the conclusion Plaintiff seeks. *Richardson*, 402  
21 U.S. at 401 (internal citation and quotation marks omitted).

22     Further, even assuming it was error for the ALJ not to discuss this record entry, the error was  
23     harmless. *Carmickle v Commission. Social Security Admin.*, 553 F.3d 1155, 1169 (9th Cir. 2008) (an  
24     error is harmless if it “was clear from the record that an ALJ’s error was inconsequential to the  
25     ultimate nondisability determination”) (internal citation and quote marks omitted). In sum, the issue  
26     before the Court is “not whether substantial evidence exists against the decision [reached by the ALJ],  
27     but, rather, whether substantial evidence supports the decision.” *West v. Berryhill*, Case No. 18-cv-  
28 00092-DKW-RT, 2019 WL 362259, at \*3 n.1 (D. Haw. January 29, 2019). Substantial evidence

1 supports the ALJ's conclusion that Plaintiff suffers from anorexia, but does not support that Plaintiff  
 2 suffers from a digestive disorder as defined by the Listing for digestive disorders. Finally, even if  
 3 one were to argue the evidence to which Plaintiff creates a susceptibility to more than one rational  
 4 interpretation, the ALJ's conclusion must still be upheld. *Thomas v. Barnhart*, 278 F.3d 947, 954  
 5 (9th Cir. 2002) (citations omitted).

6 Moreover, and setting aside Plaintiff's citation as inadequate to establish an error in failing  
 7 to consider whether Plaintiff suffers from a digestive disorder, Plaintiff fails to meet every  
 8 requirement of Listing 5.08 because she did not have two BMI readings less than 17.5 within six  
 9 months as required by 20 C.F.R. pt. 404, subpt. P, app. 1, § 5.08; *Zebley*, 493 U.S. at 530. Plaintiff  
 10 states she had a BMI of 15.8 in November 2018, and then in July 2019, her BMI was 16.4. ECF No.  
 11 18 at 6 *citing* AR 420, 420. November 2018 to July 2019 is more than a six month gap. This failure  
 12 precludes a finding that Plaintiff meets the § 5.08 Listing. *Id.*

13 Plaintiff's alleged combined "physical-mental impairment" argument also fails. This  
 14 contention is not supported by Plaintiff's cites to the Administrative Record or argument applying  
 15 those cites to case law. ECF No. 18 at 7. In the absence of evidence cited by Plaintiff to support her  
 16 contention, there is no error for the Court to consider. *Avila v. Astrue*, Case No. CIVS-07-1331 JAM  
 17 KJN, 2008 WL 4104300, at \*2 (E.D. Cal. Sept. 2, 2008) *citing Northwest Acceptance Corp. v.*  
 18 *Lynnwood Equip., Inc.*, 841 F.2d 918, 923-24 (9th Cir. 1996) (a party who presents no explanation in  
 19 support of a claim of error waives the issue).

20 Moreover, "an ALJ is not required to discuss the combined effects of a claimant's  
 21 impairments or compare them to any listing in an equivalency determination, unless the claimant  
 22 presents evidence in an effort to establish equivalence." *Ford*, 950 F.3d at 1157 (internal citation and  
 23 quotation marks omitted). *See also CF. Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir. 1990)  
 24 (holding that where a claimant provides *evidence* that the combination of her impairment established  
 25 medical equivalence, "the ALJ must explain adequately [her] evaluation of alternative tests and the  
 26 combined effects of the impairment"); *Lewis v. Apfel*, 236 F.3d 503, 514 (9th Cir. 2001) (holding  
 27 where claimant "offered no theory, plausible or otherwise, as to how his [impairments] combined to  
 28 equal a listed impairment," ALJ did not err by not discussing combined effects of impairments). Here,

1 Plaintiff points to presentation of evidence in support a combined effect of impairments. ECF No.  
2 18 at 7. Accordingly, the ALJ did not err by failing to conclude that Plaintiff's alleged combined  
3 impairments do not equal a listed impairment.

4 **IX. Order**

5 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for Reversal and/or  
6 Remand (ECF No. 18) is DENIED.

7 IT IS FURTHER ORDERED that Defendant's Cross-Motion to Affirm (ECF No. 19) is  
8 GRANTED.

9 IT IS FURTHER ORDERED that the Clerk of Court shall close this case and enter judgment  
10 accordingly.

11 DATED this 25th day of May, 2022.

12   
13 ELAYNA J. YOUCRAH  
14 UNITED STATES MAGISTRATE JUDGE

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